mitted. It would seem that the policy of discouraging crimes should counteract a tendency to perjury, unless the inducement offered is out of proportion to the legitimate labor required.

INTERSTATE COMMERCE — CONTROL BY STATES — RESERVATION BY STATE OF RIGHT TO FIX INTERSTATE RATES AS CONDITION OF INCORPORATION OR LEASE. — A state-owned interstate railroad was leased by a statute incorporating the lessee and providing that all rates charged should conform to the schedules fixed by a state commission. The lessee filed rates within the maximum fixed by the Interstate Commerce Commission but higher than the maximum of the state commission, though this maximum was reasonable. *Held*, that the state cannot compel the lessee to reduce the rates. *State* v. *Western & Atlantic R. Co.*, 76 S. E. 577 (Ga.). See NOTES, p. 539.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — EFFECT OF INTENT OF PERSON TO WHOM GOODS ARE SHIPPED. — The Sabine Company shipped lumber by rail from Ruliff, Texas, to Sabine, Texas, and indorsed over the bills of lading to one who had contracted to purchase. The purchaser had the lumber switched to the docks at Sabine, where it remained for thirty days until the arrival of a ship, chartered by the purchaser, on which it was loaded and carried abroad. At the time of the shipment by the Sabine Company the purchaser intended the lumber to go abroad but had not decided upon the particular destination. The Sabine Company did not know that the lumber was to go beyond Sabine. *Held*, that the shipment from Ruliff to Sabine is part of a foreign shipment and is not subject to state rate regulations. *Texas & New Orleans R. Co.* v. *Sabine Tram Co.*, 33 Sup. Ct. 229.

A landmark in the development of the law as to the carriage of goods having an ultimate destination beyond a state was the decision that a steamer operating on the navigable waters of the United States but wholly within a state, could be regulated by Congress if it carried goods to be transshipped beyond the state. *The Daniel Ball*, 10 Wall. (U. S.) 557. On the same principle the business of an intrastate railroad handling such goods is held not liable to state taxation. *Norfolk & Western R. Co.* v. *Pennsylvania*, 136 U. S. 114, 10 Sup. Ct. 958. Further it has been decided that when goods are shipped under a bill of lading for an intrastate trip the regulation of the carriage is for Congress and not the state if the shipper intended to transship abroad, though he had not decided on a particular destination. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 31 Sup. Ct. 279; *Railroad Commission of Ohio* v. *Worthington*, 225 U. S. 101, 32 Sup. Ct. 653. But *cf. General Oil Co.* v. *Crain*, 209 U. S. 211, 28 Sup. Ct. 475. In holding that the character of a shipment may be determined by the intent of the purchaser, the court takes a step in advance, and one not in accord with the view expressed in a slightly earlier case. *Gulf, Colorado & Santa Fé Ry. Co.* v. *Texas*, 204 U. S. 403, 27 Sup. Ct. 360. That case, however, is possibly distinguishable on its facts, as the transshipment was made not by the original purchaser but by a person who purchased the goods from him.

INTOXICATING LIQUORS — WILSON ACT — APPLICABILITY TO FOREIGN COMMERCE. — A judgment was obtained against the plaintiff in a state court of last resort for the amount of a license tax imposed on all liquor dealers as a police regulation by the state legislature under the authority of the Wilson Act. The plaintiff, who dealt only in foreign liquors, appealed on the ground that the Wilson Act applied only to interstate commerce, and that the tax was therefore imposed in violation of the provisions of the federal Constitution forbidding states to lay imposts, and giving to Congress the power to regulate

foreign commerce. *Held*, that the Wilson Act applies to foreign as well as to interstate commerce. *De Bary & Co.* v. *Louisiana*, 227 U. S. 108, 33 Sup. Ct. 239. See NOTES, p. 533.

MANDAMUS — PARTIES — RIGHT OF DE FACTO OFFICER TO COMPEL PAYMENT OF SALARY. — In a mandamus proceeding to compel payment of a public officer's salary, the defendant alleged that the relator was not properly commissioned in office. *Held*, that such a defense cannot be set up. *State ex rel. Frank* v. *Goben*, 152 S. W. 93 (Mo.).

Because of the necessity of confidence in public acts, and to protect the rights of parties relying on official acts, a *de facto* title to a public office may not be collaterally attacked. *State* v. *Carroll*, 38 Conn. 449; *People ex rel. Hoffman* v. *Hecht*, 105 Cal. 621, 38 Pac. 941. But this doctrine is in no wise remedial to the officer himself. See 20 HARV. L. REV. 458. Only a public officer lawfully appointed or elected, and installed, has a right to compensation for his services. *Wittmer* v. *City of New York*, 50 N. Y. App. Div. 482, 64 N. Y. Supp. 170; *City of Philadelphia* v. *Given*, 60 Pa. St. 136. But *cf. Cousins* v. *City of Manchester*, 67 N. H. 229, 38 Atl. 724. Thus in an ordinary action of debt for his salary, the plaintiff's title to office may be questioned. *City of Philadelphia* v. *Given*, *supra*; *Sheridan* v. *City of St. Louis*, 183 Mo. 25, 81 S. W. 1082. Also in mandamus proceeding, contrary to the principal case, lack of *de jure* title may be set up. *State ex rel. Dudley* v. *Daggart*, 28 Wash. 1, 68 Pac. 340; *Williams* v. *Clayton*, 6 Utah 86, 21 Pac. 398. When, however, a third party claiming to be a *de jure* officer brings mandamus for his salary, the court by allowing a defense refuses to question the title of the *de facto* officer, for his title can then be justly adjudicated only in a *quo warranto* proceeding to which he is a party. *State ex rel. Vail* v. *Draper*, 48 Mo. 213; *State ex rel. Simmons* v. *John*, 81 Mo. 13. The principal case confuses a suit brought by the *de facto* officer himself with such cases, and by refusing without reason to go into the question of the plaintiff's title to the office, allows a recovery.

MINES AND MINERALS — ADVERSE POSSESSION WHERE SEVERANCE OF SURFACE. — The defendant was owner of the surface of the soil through a deed reserving the minerals to the grantor. The plaintiff was grantee of the gypsum. The defendant mined the gypsum from time to time for more than the statutory period of limitations. *Held*, that an injunction will be granted to restrain further removal. *White* v. *Miller*, 78 N. Y. Misc. 428 (Sup. Ct.).

The right to the surface of land is capable of severance from the right to the underlying mineral deposits which thereby form a distinct corporeal hereditament. *Hartwell* v. *Camman*, 10 N. J. Eq. 128; *Lillibridge* v. *Lackawanna Coal Co.*, 143 Pa. St. 293, 22 Atl. 1035. In case of such severance ordinary possession of the surface for the statutory period does not operate as adverse possession of the minerals. *French* v. *Lansing*, 73 N. Y. Misc. 80, 132 N. Y. Supp. 523; *Armstrong* v. *Caldwell*, 53 Pa. St. 284. Nor are occasional acts of mining and carrying off the minerals sufficient. *Hooper* v. *Bankhead*, 171 Ala. 626, 54 So. 549; *French* v. *Lansing*, *supra*. The possession, to be sufficient, must include a continuous operation of the mines in accordance with the nature of the business. *Gordon* v. *Park*, 219 Mo. 600, 117 S. W. 1163. See *Armstrong* v. *Caldwell*, *supra*, 288. *Cf. House* v. *Palmer*, 9 Ga. 497. The acts must likewise be open and notorious. *Dartmouth* v. *Spittle*, 19 Wkly. Rep. 444. See *Gordon* v. *Park*, *supra*. In general the extent of acquisition by adverse possession without color of title depends on the actual possession of the adverse claimant, which in the case of mines is confined practically to the part being worked. But where the claim is under color of title it is to the limits of that title, even though only part of the land is actually occupied. *Jackson* v. *Olitz*, 8 Wend. (N. Y.) 440. This distinction recognized in general in regard to land is not